

TECHNICAL ASSISTANCE – SHIFT DIFFERENTIAL, ON-CALL, AND CALL-BACK PREMIUM PAY

Prepared by the Division of Human Resources in the Department of Personnel & Administration on July 1, 2002.

GENERAL INFORMATION

- Departments and higher education institutions (“agencies”) are accountable for following class pay differential designations to pay their employees accordingly. The Division of Human Resources (DHR) publishes class designations in the annual compensation plan at the beginning of each fiscal year. A differential code of 0 means a class is not eligible for shift differential and on-call pay; 1 means eligible for shift differential only; 2 means eligible for on-call only; and, 3 means eligible for both shift differential and on-call. Overtime-eligible employees are eligible for call-back pay.
- Premium pay rates, including shift differential rates and on-call hourly or weekly rate, will be published in the annual compensation plan.
- All premium pay must be included in the calculation of the hourly rate for purposes of overtime cash compensation. For example, if an employee’s regular hourly rate is \$10.00, and has worked 20 hours first shift and 30 hours third shift (10% shift differential rate), the employee’s hourly rate used to compensate the overtime worked during that week is calculated as follows:

$$(\$10 * 20 \text{ hours} + (\$10 * 110\%) * 30 \text{ hours}) / (20 \text{ hours} + 30 \text{ hours}) = \$10.60$$

The employee’s hourly rate for overtime compensation purposes during the week is \$10.60.

- Effective July 1, 2002, agency heads are authorized to approve eligibility for individual positions in classes that are published as not eligible for premium pay. Approval should be obtained **before** premium pay begins. Agencies must maintain records of the individual positions that are approved.

Remember, in those classes published in the compensation plan as eligible for premium pay, agency heads do not have the authority to change eligibility for individual positions.

- Central Payroll produces reports to track individual shift differential, on-call, and call-back payments. Agencies are to monitor payments to prevent unauthorized pay.
- Agency payroll offices are to begin overpayment collection an approval request is untimely or if the request is not approved. Central Payroll may notify the State Controller’s Office if dollar amounts are large.

- If repayment schedules need to go beyond six months, approval for such repayment schedules must be obtained from the State Controller's Office per Fiscal Rule 2-8.

SHIFT DIFFERENTIAL

Shift differential applies to employees in an eligible class as published in the annual compensation plan.

The Attorney General's Office has advised the DHR that an employee who occupies a position in a class which is eligible to receive a shift differential and who is assigned to work a second or third shift should be compensated for hours worked at the appropriate shift differential rate. This applies to employees who are assigned second or third shifts on an irregular as well as a regular basis. Shift differential does not apply to paid leave hours (e.g., annual leave, sick leave, jury duty, holiday, etc.).

Second shift applies to all hours worked when at least half of the scheduled work hours fall between 4:00 p.m. and 11:00 p.m. Third shift applies to all hours worked when at least half of the scheduled work hours fall between 11:00 p.m. and 6:00 a.m. If the scheduled hours are evenly split between shifts, the higher shift differential rate applies to all hours worked.

Example. Employee works from 1:30 p.m. to 10:00 p.m. (lunch from 5:30 to 6:00). All hours worked are paid at the 2nd shift rate.

Example. Employee works from 1:30 p.m. to 10:00 p.m. (lunch from 5:30 to 6:00). The employee works from 1:30 p.m. to 4:00 p.m. and then goes home sick for the remainder of the shift. The 2.5 hours worked are paid at the 2nd shift rate and 5.5 hours of sick leave are paid at the regular rate without shift differential.

Eligible employees may work shifts that are longer than 8 hours, double shifts, split shifts, or incidental shift hours. There are two key concepts or steps. First, set the regularly scheduled shifts to be used in the agency. The differential applied to all hours is based on where half or more of the continuous hours fall within the regularly scheduled shift. If a work unit does not use shifts (regular operations are 8:00 to 5:00) and an eligible employee (shift eligible class but work unit does not use shifts) works extra hours that fall in a shift, overtime will be applicable but shift differential may not. In this case the agency has some discretion but should be consistent. The same is applicable to double or triple shifts that are required in unusual circumstances.

Example. Employee works a split shift from 8:00 a.m. to noon and 6:00 p.m. to 10:00 p.m. In essence, the employee is working two part-time shifts. The first four hours may be paid at the regular rate and the four hours during 2nd shift are paid at the 2nd shift rate.

Example. Employee works a 10-hour shift on regular basis from 1:00 p.m. to midnight. Applying the concept of where half or more of the continuous hours fall, the hours are paid at the 2nd shift rate.

Example. Employee works a shift on a regular basis from 1:00 p.m. to 10:00 p.m. but is required to come in at 11:00 a.m. for training. The agency has some discretion or control over the shift differential paid based on the concept of where half or more of the *continuous* hours fall. If there is no break, all hours are paid at the 2nd shift rate (half or more fall at 4:00 p.m. and later). If there is a break, the agency could pay all of the hours at the 2nd shift rate or pay the hours before 1:00 p.m. at the regular rate and the normally scheduled hours at 2nd shift. It is important that the agency be consistent under these circumstances.

Example. Employee works the regular shift from 8:00 a.m. to 5:00 p.m. but is asked to stay for 2 hours one night to cover for a 2nd shift employee who will be late. The agency has some discretion or control over the shift differential paid based on the concept of where half or more of the *continuous* hours fall. If there is no break, all hours are paid at the regular rate (half or more fall before 4:00 p.m.). If there is a break, the agency could pay all of the hours at the regular rate and apply overtime or pay the regular rate for the normal schedule and the extra 2 hours at 2nd shift. Again, consistency is important.

Example. Employee regularly works 2nd shift from 4:00 p.m. to midnight but is asked to work a double shift to cover the absence of another employee. If the hours are continuous without a break, all of the hours are paid at the 3rd shift rate. If there is a break between shifts, the agency can pay all hours at the 3rd shift rate or could pay the first 8 hours at the 2nd shift rate and the second 8 hours at the 3rd shift rate.

ON-CALL

On-call applies when eligible employees are specifically assigned, in advance, to such status. During on-call, freedom of movement is significantly restricted; however, the employee is still free to use this personal time effectively.

- When an employee receives calls and spends time to respond to an on-call request, such time shall be considered work time. On-call pay stops when an employee starts working and resumes when an employee stops working.
- Agencies should give consideration to the following in order to assure that on-call time is not work time for overtime compensation purposes:
 - ❖ When applicable, allow employees to handle calls over the phone rather than require employees to return to work;
 - ❖ Allow employees a reasonable period of time to respond to the calls;
 - ❖ Allow on-call employees the opportunity to decline a certain number of calls or to swap or trade calls with co-workers;
 - ❖ Allow on-call employees to use the time for their own personal purposes;
 - ❖ Allow employees to trade on-call assignment with others;
 - ❖ Avoid calling employees too frequently such that employees cannot use the on-call time freely;
 - ❖ Discipline on-call employees only for relatively serious abuse of agency's on-call policy;
 - ❖ Provide employees with as much notice of their on-call duty as possible;

- ❖ Publish terms and conditions of the on-call policy in a widely distributed document.

CALL-BACK

Call-back is the base pay for two hours when an eligible employee is required to report to work before or after a scheduled shift. It is not a continuation of a shift. Eligible employees are those who are eligible for overtime; or those exempt employees who have special position approval for call-back pay.

- An employee is guaranteed two hours of call-back pay when the employee returns to work.
- On-call pay stops when an employee is called back and begins call-back duty at the designated work site. Before an employee actually starts to work, on-call continues.
- For non-exempt employees, all call-back hours are work time and shall be included in the work hour count for overtime compensation purposes.
- Exempt employees, who are paid on a monthly basis, may be called back and be guaranteed for the minimum two-hour call-back pay. However, agencies must submit requests to allow such call-back eligibility on a position basis. In addition, such payment to exempt employees will be made in one-to-one paid time off rather than cash.
- Home-to-work and work-to-home travel during a call-back situation is not considered work and time spent on such travel shall not be included as work time for overtime compensation purposes. However, during the travel, the employee is considered to be on-call.

The above information is general in nature and every attempt is made to keep this information updated. For more information, contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and procedures are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice. For additional information, contact Total Compensation/Systems at 303-866-2455 or job.eval.comp@state.co.us.